LEGAL CONTROL OF HEALTH IN INDIA : A STUDY WITH SPECIAL REFERENCE TO HIMACHAL PRADESH

SYNOPSIS

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Submitted by

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I. INTRODUCTION

'Good health is a way of life.' India's one of the oldest scriptures and reservoir of rich thoughts, knowledge and wisdom- Rigveda preaches humanity:[1]

With the passage of time and advancement in medical science and technology, the allopathic system for curing the diseases started becoming very popular all over the world and India is no exception to it. All these have lead to huge investment and expenditure made on ultra modern hospitals, staff, furniture, equipments etc. The cost of medical expenses has increased to a large extent thereby.

The problem of health care is more acute in developing countries. India being one of the developing countries and where the majority of the population is living below poverty line, it becomes very difficult to provide health services and facilities to the marginalized and the susceptible groups of the society. The socio-economic gap between people living in our country is too wide. Those who live in poverty their condition of life is so limited by malnutrition, illiteracy, squalid surroundings, high infant mortality and low expectancy of life that all these stark realities cannot define reasonability what human survival and decency mean. The population of these people is increasing in our country day by day. Here comes the role of Government to provide them with all the facilities and health care services so that along with the rich the poor are also not deprived with the basic facilities.

The state agencies are better equipped to prevent the causes and deal with the ailments in a more regulatory, effective and authoritative manner. The legal responsibility of the state agencies to take care of the individual's health and ensure his physical and mental well-being is therefore considered to be a measure of the individual's right to health in a welfare state. Moreover Health to be protected as a human right has been well recognized to the international community as well. The World Health Organization[2] has defined health as a state of complete physical, mental and social well being and not merely the absence of disease or infirmity.

[1] Rig Veda 1.89.1. available at https://www.wisdomlib.org/hinduism/book/rig-veda-english-translation/d/doc829922.html accessed on 15 -10-2021.
[2] WHO was constituted in 1948.

THE RIGHT TO HEALTH IN INTERNATIONAL HUMAN RIGHTS

The right to the highest attainable standard of health is a human right recognized in international human rights law. The International Covenant on Economic, Social and Cultural Rights, widely considered as the central instrument of protection for the right to health, recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." The 1965 International Convention on the Elimination of All Forms of Racial Discrimination, [3]The 1966 International Covenant on Economic, Social and Cultural Rights,[4] The 1979 Convention on the Elimination of All Forms of Discrimination against Women[5],The 1989 Convention on the Rights of the Child,[6]The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.[7] are some other documents that recognise right to health.

LEGAL CONTROL ON HEALTH IN INDIA

The constitution of India grants protection to health as a right under Part III. 'Life' in Article 21 of the Constitution isn't just the physical demonstration of breathing. It doesn't imply insignificant creature presence or proceeded with drudgery through life. It has a lot more extensive importance which incorporates the right to live with human nobility. Notwithstanding, the composers and the establishing fathers of the constitution had extremely unrealistic vision and in this manner, had forced the obligation on state in the idea of Directive Principles of State Policy under Part IV of the Constitution wherein it is the duty of the state to guarantee social and financial equity to its residents.[8]

In India we have a large number of legislations in the field of medicine and health. The legislations are made keeping in view of the needs of the society and protecting the health of the people. The drug industry did basically not exist in India in the beginning of the 20th century. Most of the drugs were imported from foreign countries.Two of the laws, The Poisons Act and the Dangerous Drugs Act were passed in 1919 and 1930 respectively. The Opium Act was quite

[3] Art. 5 (e) (iv) International Convention on the Elimination of All Forms of Racial Discrimination: 1965
[4] Id Art.12
[5]Id Arts. 11 (1) (f), 12 and 14 (2) (b)
[6] Id Art. 24.
[7] Id Arts. 28, 43 (e) and 45 (c)
[8] Article 38,39,41,42,47, Constitution of India

old having being adopted as early as 1878. In 1985, the Narcotic Drugs and Psychotropic Substances Act were enacted repealing the Dangerous Drugs Act 1930 and the Opium Act of 1878. At present the following Acts are in force in order to govern the manufacture, sale, import, export and clinical research of drugs and cosmetics in India. The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954, The Narcotic Drugs and Psychotropic Substances Act, 1985, The Epidemic Diseases Act, 1897, The Transplantation of Human Organs Act, 1994 , The Mental Health Act, 1987 Indian Medical Council Act, 1956, Indian Medicine Central Council Act, 1970 , Indian Nursing Council Act, 1947 , Dentist Act, 1948, The Pharmacy Act, 1948 , The Homeopathy Central Council Act, 1973 to name a few.

2. PROBLEM PROFILE

The health and right to health are complementary and supplementary to each other and thus in discussing the concept of right to health, it is important to understand the meaning of "health". The concept of health is a complex matter that touches on deep and unanswered issues of medicine, ethics, and law as its heart lies in the universal and terrifying fact of human vulnerability.[9] The word "health" means different things to different people depending upon the situations under which it has defined and also upon the various determinants of health.[10]

The right to health care is an age old phenomenon. The need to health care was recognized right from the birth of human being. Traditional and household beliefs were used to cure and prevent various diseases. In olden days the environment was not much polluted, people were health conscious, the life of people was slow and steady and due to all these factors there were fewer complexities relating to human health.

With the fast growing development of the economy and increase in pollution level resulting in degradation of environment pollution as well as industrialization and urbanization, there in an increase of health related problems. Moreover due to busy and fast life, people are less conscious about their health and they spend very little time to health issues. Hence various other factors have given rise to complicated diseases

[9] Eleftheriadis Pavlos, "A Right to Health Care," 40(2) *Journal of Law, Medicine and Ethics* 268 (2012)
[10] Avanish Kumar, *Human Right to Health* 15 (Satyam Books Pvt. Ltd., New Delhi, 2007)

Right connotes equity and equality. Equity in health services or health care system is very much essential. It is said that "in every part of region and in every types of political and social system differences in health have been noted between different social groups in the population and between different geographical areas in the same country."[11]

Equity in health connotes that ideally everyone should have a fair opportunity to attain his or her full health potential and more pragmatically, that no one should be disadvantaged from achieving this potential, if it can be avoided. It is concerned with creating equal opportunities for health and with bringing health differentials down to the lowest levels possible.

Vulnerable groups of the society have little or no access to fundamental and human rights such as health, medical services, food etc. Many of these groups are ostracized and not favored by the society at large, which makes it difficult for them to participate in mainstream processes whereby they could demand their rights. Over and above the minimal awareness about health related issues leaves them in a situation wherein they have very little access to fundamental rights. These groups are unaware that the refusal for treatment, denial of access to essential drugs, discrimination in the health care services and lack of information leads to human rights violations.

Law plays a very important role in regulating the health care and in providing better health care services to the poor and the needy. At the same time there has been a lack of sensitivity about health care rights among the public and much needs to be done to bring a change in this area.

3. LITERATURE REVIEW

With the advancement of time, the need for protection of right to health and to secure health care for everyone is now essential due to its recognition under human rights law. A large number of works have been undertaken relating to health right under the international human rights law. Some of the important works are being discussed .

[11] Whitehead M. Concepts and principles for tackling social inequities in health. Levelling up Part 1, accessed from https://www.euro.who.int/__data/assets/pdf_file/0010/74737/E89383.pdf accessed on 24-12- 2021

Md. Zafar Mahfooz Nomani, *Right to Health: A Socio-legal Perspective*, [12] critically examined the present situation of health care operations in India. Similarly, Avanish Kumar in his book *Human Right to Health*[13] rightly says that medical malpractice, perceived and actual, especially in the current environment of fast paced technological advances, is among the most critical health issues in India today and related litigations have been increasing year by year. But these works are providing no light over implementing mechanisms of the law relating to the right. Moreover in the recent times various works have been done to find out the co-relation between medical negligence and its relief under the Consumer Protection Act, 1986.

Ashok V. Patil and others (2002) in 'Current Health Scenario in Rural India' find poor health scenario of rural India. To them, though health status of Indian population has improved with respect to some of the indices of health like mortality, morbidity, maternal mortality, infant and child mortality etc. but still health of rural population is not satisfactory. Rural people have poor health consciousness.[14]

Ajit K. Dalai (2005) in 'Integrating Traditional Services Within Primary Health Care' highlights drawbacks of dependence on western medicine in Indian sociocultural context. Western medicine is still not affordable to majority of rural population.Therefore, he suggests to introduce integrating traditional services along with western medicine within primary health care so that rural people get at least one kind of health service readily available in primary health centers.[15]

Gangadharan K (2007)in 'Morbidity and Health Care in Kerala: A distributional profile and implication' finds better health status in Kerala than any other Indian states. Despite of better health status morbidity is high in both rural and urban Kerala. According to him, Government of Kerala is facing problem to provide health care to ever increasing people in Kerala.[16]

Subrata Mukherjee and Levesque Jean-Frederic(2010) in 'Changing Inequalities in Utilisation of Patient Care in Rural India: Evidence from the NSS' studies inequality in health care in India

[12] Md. Zafar Mahfooz Nomani, *Right to Health: A Socio-legal Perspective* (Uppal Publishing House, New Delhi, 2004.)
[13] Avinash Kumar, *Right to Health* (Satyam Law Publication, New Delhi, 2007)
[14] Ashok V Patil., K. V Somasundaram. and R.C. Goyal, "Current Health Scenario in Rural India" 10 *Australian Journal Rural Health* 129-135 (2002)
[15] Ajit K Dala., "Integrating Traditional Services Within Primary Health Care" 7(2) *Journal of Health Management* 249-265 (2005)
[16] K Gagangadharan "Morbidity and Health Care in Kerala, A Distributional Profile and Implications" 7(2) *Indian Journal of Social Development* 195-211 (2007)

from 1995-2004. By analysing health statistics of Bihar, Uttar Pradesh, Madhya Pradesh and Punjab, they show that there exists high level of poor rich gap in health care utilisation. There exists more Inequality in distribution of health care in the states which have little capacity to provide health care.[17]

Baru Rama, Acharya Arnab and Others (2010) in 'Inequalities in Access to Health Services in India: Caste, Class and Region' highlight inequalities in access to health service in India. According to them, inequalities are found in utilisation of preventive service such as childhood immunisation and anti natal care and affordability of health services in context of region, caste and class.[18]

Zakir Hussain (2011) in 'Health of National Rural Health Mission' highlights progress of National Rural Health Mission in India. His study reveals that despite of measures taken by government of India for providing health care to rural people through national rural health mission there are many deficiencies for which people are not getting proper care. According to him, national rural health mission has put pressure on state governments to divert resources to health sector, there by substantially strengthening public health system including its workforce.[19]

D. Benerji (2005) in his study 'Politics of Rural Health in India' highlights politics of national rural health mission programme initiated by government of India. According to him government has not considered the past experience for implementation of such an important programme throughout the nation. To him, successive government could not successfully implement various health programmes in past and causes of failure in past should have been considered before implementation of national rural health mission so that the promises given by government becomes fulfilled.[20]

Sankar Prinja, Arunkumar Aggarwal, Rajesh Kumar and Panas Kanavos (2010) in their study User charges in health care: evidence of effect on service utilisation and equity from north India

[17] Subrata Mukherjee and J.F Levesque., "Changing Inequalities in Utilisation of Inpatient Care in Rural India: Evidence from NSS" XLV (46) *Economic And Political Weekly* 84-91 (2010)
[18] Baru Rama, "Inequalities in Access to Health Care India: Caste, Class and Region" XLV (38) *Economic and Political Weekly* 49-57 (2010)
[19] Jakir Hussain, "Health of National Rural Health Mission" XLVI(4) *Economic and Political Weekly* 53-60 (2011)
[20] D. Benerji, "Politics of Rural Health in India " XXXXIX (3) *Indian Journal of Public Health* 113-122 (2005).

find inequality in utilisation of health care service. They also find out gender inequality in utilisation of health care in north India.[21]

Yarlini Balarajan and others (2011), in their study ^health Care and Equity in India' highlight inequalities in health care in India. Their study reveals that inequality persists in preventive and curative health care throughout India. They establish correlation between income and health inequality in India. They also suggest measures for minimising inequality in health care in India.[22]

Chandan Medatwal(2011) in Women's empowerment in NRHM: A Case Study of ASHA (accredited Social Health Activist) highlights ASHAs employed under national rural health mission is very actively working in their respective field. They motivate rural women for getting proper maternity and child care. Despite of their hard work in respective field they receive very negligible remuneration for which they get demoralized.[23]

Harish Nair and Rajmohan Panda (2011), in 'Quality of Maternal Health Care in India: Has the National Rural Health Mission Made A Difference' focus upon quality of maternal health care in some selected parts of India. Their study reveals that maternal care is hampered due to some extraneous factors. National rural health mission is a good starting which shows right ways of maternity care. Proper implementation of programme depends upon several factors.[24]

Suresh Kumar Patra, L. Annam and M. Ramdas(2013) in National Rural Health Mission and Health of Odisha: An Economic Analysis highlight improvement of health status after implementation of national rural health mission in Odisha. Their study reveals that national rural health mission has significant contribution for development of health care in rural Odisha. Health

[21] Sankar Prinja , Arun Kumar Aggarwal, Rajesh Kumar and Panas Kanavos, "User Charges In Health Care; Evidence Of Effect On Service Utilisation And Equity From North India" 136 *Indian Journal of Medical Research* 868-876 (2012)
[22] Balarajan Yarlini, S. Selvaraj and S Subramaniam., "Health Care and Equity in India" *Lancet* 505-515 (2011)
[23] Chandan Metadwal, "Womens' Empowerment in NRHM: A Case Study of ASHA" 3(32) *Shodh Samiksha Aur Mulyankan* 12-14 (2011)
[24] Harish Nair and Panda Rajmohan, "Quality of Maternal Health Care in India: Has the National Rural Health Mission Made a difference" *Journal of Global Health* 79-86 (2011)

infrastructure, manpower and essential equipments for health care delivery service have been increased in Odisha through proper implementation of national rural health.[25]

Dr. Subhas Salunke,Dr. P Padmanaban,&Prasanth in his paper suggested that Public Health is "the science and art of preventing disease, prolonging life and promoting health through the organized efforts and informed choices of society, organizations, public and private, communities and individuals". And Public Health Law is the study of the legal powers and duties of the state, in collaboration with its partners, to ensure the conditions for the people to be healthy, and of the limitations on the power of the state to constrain for the common good the autonomy, privacy, liberty, proprietary, and other legally protected interests of individuals. Public Health Law essentially regulates the Core public health functions[26].

Morris G. Carstairs (1955) studies Medicine and Faith in Rural Rajasthan' and finds out influence of tradition on health behaviour of rural people of Rajasthan. His study reveals that there exists difference of opinion of medical professionals with villagers regarding disease and illness. Lack of knowledge of villagers regarding disease and modem medicine for treatment of disease creates misunderstanding between physicians and villagers. This misunderstanding creates lot of problem to introduce modem medicine in rural Rajasthan.[27]

Sujata K Rao (1998) in her monograph ^Health Care Services in Tribal Areas of Andhra Pradesh: A Public Policy Perspective' highlights health status of tribes in Andhra Pradesh. She finds poverty as prime cause of ill health, persistent morbidity and early death in tribes in Andhra Pradesh. Mortality rate of mothers and infants is more among tribes of Andhra Pradesh.. Tribes of Andhra Pradesh have poor access to basic health care service responsible for adverse differential health status of tribal area with developed part of the state.[28]

K. R. Nayar (1998) in 'Politics of Decentralization: Lesson from Kerala' finds positive impact of decentralization of health care in Kerala. Health status of people has improved due to

[25] Suresh Kumar Patra, Annam L. and M Ramdas., "National Rural Health Mission and Health of Odisha: An Economic Analysis" 13(4) *Language in India* 305-315 (2013)
[26] Subhas Salunke, P Padmanaban & KS Prasanth , "Approach Paper on Public Health Act Task Force on Public Health Act" 1-32 (2012)
[27] G. M Carstairs, "Medicine and Faith in Rural Rajasthan" *Health, Culture and Community* 107-36 Russel Sage Foundation . (1955)
[28] K. Sujata Rao, Health Care Services in Tribal Areas of Andhra Pradesh, A Public Policy Perspective, 481-486 *Economic and Political Weekly* (1998) .

decentralization of health care. Need based programs make epidemiological shift in Kerala. But some more attention is required to find out new needs of people. Only problem of decentralization is conflict between authority and political leaders in implementing need based programs.[29]

Shilpa Bhatt *et.al.* (2015) presented a comprehensive picture of the activities carried out by the eye care unit of district Gandhinagar, Gujarat to successfully implement the National Programme for Control of Blindness in the district. The paper reveals that the proactive approach adopted by the eye care unit of the district has been effective in realizing the goals and objectives of the National Programme for Control of Blindness in the district.[30]

M. Chokshi et.al. (2016) conclude that Health systems and polices have a critical role in determining the manner in which health services are delivered, utilized and affect health outcomes. 'Health' being a state subject, despite the issuance of the guidelines by the central government, the final prerogative on implementation of the initiatives on newborn care lies with the states. They further described the public health structure in the country and traced the evolution of the major health programs and initiatives with a particular focus on newborn health.[31]

4. **OBJECTIVES OF THE STUDY**

1. To understand the evolution of the Law relating to health.
2. To study the International and National legal framework related to health.
3. To identify the shortcomings in Health Laws.
4. To study and analyze the decisions of the Supreme Court and High Courts.
5. To evaluate the legal control over health in the State of Himachal Pradesh.

5. HYPOTHESIS

It is hypothesized that:

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[29] Imrana Qadeer, Kasturi Sen and K.R. Nayar, *Public Health and The Poverty of Reform: The South Asian Predicament* (Sage Publication, New Delhi, 2001)

[30] Shilpa Bhatt, Pina Soni, Alok Chaurasia, "National Blindness Control Programme In District Gandhinagar, Gujarat" *International Journal of Recent Trends in Science and Technology* 716-721 (2015)

[31] M. Chokshi, B. Patil, R. Khanna, S. B. Neogi, J.Sharma , V. K Paul. and S.Zodpey , "Health Systems in India," 36(Suppl. 3) *Journal of Perinatology* 9-12 (2016)

1. The existing laws related to health are inadequate.
2. There is no umbrella legislation on health

6. RESEARCH METHODOLOGY

Before the frame work of the study is to be described, it is necessary to state the scope of inquiry and methodology of the study. The study is to be confined to the implementation of legislations and policies relating to right to health in India particularly in the state of Himachal Pradesh. Since it is a doctrinal research, the study is based on purely based on the theory work. The methodology is based on method of case study which are concerned with primary sources and secondary sources which includes the judgements which are passed by the Supreme Court and High Court related to health and it also includes the help of other sources like Books, Articles, Indian and foreign Journals, Literature Review, Newspapers, Debates, Commentaries and many other websites. Various Codified Laws, News Weekly, International Conventions has been studied an analyzed to gather information about this particular research. In short, it can be said that the work is based on theory research to analyze the study.

7. UNIVERSE OF THE STUDY

Since the researcher study is not based on the empirical experience of the study, it is purely based on the theoretical aspects of the material which are provided in different sources like books, journals, articles and various other newspapers. The scope and main focus of this study is to examine the relevant provisions relating to the health, the attitude of the judiciary regarding the act and the role performed by it. The importance of the study is based on the material which creates a basic towards the understanding of the problem of health in India.

8. CHAPTERISATION

The thesis has been divided into 8 chapters

1. **Introduction :** This chapter shall provide a brief overview of the topic, including the objectives and scope of the work, research methodology used, and hypotheses followed by the scheme of the work.

2. **Historical Perspective :** This chapter shall unfold the historical perspective as to the legal control of health in India and in the state of Himachal Pradesh. The chapter shall also traverse through various suggestions and recommendations earlier made by different committees, institutions, health service providers especially the attempts tried out for bringing reforms in legal framework relating to health sector.
3. **International Legal Framework: The** chapter shall try to evaluate the international Legal framework in relation to the health related problems of India. This chapter will try to look for the solutions in the light of International laws and laws of different countries.
4. **Constitutional and Indian Legal Framework:** The chapter shall focus on the constitutional framework for control of Health related problems. There are a number of laws related to health . This chapter shall focus on formation of umbrella legislation at national level as well as in the state of Himachal Pradesh.
5. **Regulation of Health Services in Himachal Pradesh:** There are a number of regulations governing health services in the state of Himachal Pradesh. But these regulations sometimes overlap or contrast each other. These regulations shall be discussed in this chapter.
6. **Judicial Approach:** This chapter shall illuminate the concept of Judicial Process, its nature and significance. The chapter recites the present procedure available to the health control in India and in the state of Himachal Pradesh.
7. **Results and Discussions:** The efforts will be made to draw the results on the basis of previous chapters. A detailed discussion is done in this chapter of various aspects of laws on health control.
8. **Conclusion and Suggestion**: This chapter will give conclusion drawn from the chapters and provide the suggestions.

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CERTIFICATE
(SYNOPSIS APPROVAL CERTIFICATE)

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